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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,491	07/21/2003	Brian Roberts	10750-250	4988

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EXAMINER
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LARSON, JUSTIN MATTHEW

ART UNIT	PAPER NUMBER
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3782

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/30/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/622,491

Applicant(s)

ROBERTS, BRIAN

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3, 17-19, 22-24 and 26-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3, 17-19, 22-24 and 26-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9/22/06.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 30, 36, 47, 48, 50, and 51 are rejected under 35 U.S.C. 102(b) as anticipated by Fier (5,529,229 A).

Regarding claims 30 and 36, Fier discloses a backpack, comprising a backpack body having a top (24), a bottom (26), a back-facing face and an away-facing face defined by at least a back-facing panel (20) and an away-facing panel (22), said backpack body defining at least one storage compartment, a closure member (30) reversibly closing an opening in the top, at least one shoulder strap (56/60) connected to said backpack body, wherein said at least one shoulder strap is adapted for mounting said backpack on a wearer, and at least one length-adjustable (via buckle 62) shoulder strap cinch strap (66/68), wherein the at least one shoulder strap cinch strap has a first end that is on the backpack body (72) and a second end that is on the at least one shoulder strap (60) and extends over the closure member (30), and wherein the at least one shoulder strap cinch strap comprises a quick release mechanism (62). Regarding the quick-release mechanism, Examiner is of the position that the end of the cinch strap can be removed or slid out of the sliding buckle shown as quickly as a user can pull it out. Note that the end of the cinch strap is not folded over so as to prevent it from being

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removed from the buckle. See the "Response to Arguments" section below for further explanation of this position regarding the end of the cinch strap being folded over.

Regarding claim 47, the cinch strap (66/68) of Fier has first and second portions, the first and second portions being separable (at buckle 70) from each other, and the cinch strap extends forwardly over the backpack from a first end (66) that is on the at least one shoulder strap to a second end (68) that is positioned at least part way towards the away-facing face.

Regarding claim 48, the back-facing face (20) of Fier has a top end and the shoulder strap is connected to the back-facing face at a position spaced away from the top end (via buckle 14, see Figure 1).

Regarding claim 50, the first and second portions of the cinch strap (66/68) of Fier are connected to different portions of quick-release mechanism (70).

Regarding claim 51, the cinch strap of Fier extends over the closure (30).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 17-19, 22-24, 26-28, 30-39, 41, 42, 44, 45, 47, 48, 50, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ivarson et al. (US 6,474,524 B1) in view of Gausling et al. (US 6,164,509 A), and further in view of Godshaw (US 6,601,743 B2).

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Regarding claims 17, 26, 30, 33, and 36, Ivarson et al. disclose a backpack comprising a backpack body, said backpack body having a back-facing face (16), said backpack body defining at least one storage compartment having a bottom (14), a closure member (32) and a top that is openable by the closure member, wherein said bottom is angled upwards in a direction away from said back-facing face, where said backpack is configured to maintain said bottom generally in said direction when said backpack contains a load therein; and at least one shoulder strap (38) connected to said backpack body, wherein said at least one shoulder strap is adapted for mounting said backpack on a wearer; and wherein said backpack body has an away-facing face (24) generally opposed to said back-facing face. Ivarson et al. fails to disclose a semi-rigid bottom board positioned at said bottom and at least one cinch strap connected between the backpack body and shoulder strap and extending across the closure member, the cinch strap including a separation clip that is separable whereby unobstructed access is provided to the storage compartment that is openable by the closure member when the separation clip is separated.

Regarding the semi-rigid bottom board, Gausling et al. teaches that a rigid bottom on a backpack body provides added support and ergonomic utility to the backpack (col. 7 lines 12-17). Gausling et al. further teaches that this rigidity along the bottom of the backpack body can be provided by inserting a rigid member such as a hard Nylon sheet inside a pocket formed by the bottom panel of the backpack (col. 7 lines 34-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide rigidity along the bottom surface of the Ivarson

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et al. backpack by implementing a semi-rigid bottom board along the bottom surface, as taught by Gausling et al., in order to provide additional support and ergonomic utility to the backpack.

Regarding the cinch strap extending over the closure member, Gausling et al. teach support straps (600) extending from a backpack's shoulder strap over the top of the backpack to an away-facing face of the backpack, the support strap functioning to maintain the shape of the bag and offer further support for the load being carried (col. 9 lines 5-27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide support straps on top of the backpack of Ivarson et al., as taught by Gausling et al., in order to help maintain the shape of the bag and to provide more support for the load being carried in the backpack. These straps, when implemented on the backpack of Ivarson et al. would certainly extend across the closure (32) of Ivarson et al.

Regarding the cinch strap having a separation clip, the support straps that have been added to the Ivarson et al. backpack are not separable and inhibit a user's ability to access the interior of the backpack through the zippered closure (32). Godshaw, however, also discloses a pack and, like Gausling et al., teaches that support straps (50,52) extend over the top of the pack, the support straps serving to maintain the shape of the bag and to provide more support the load being carried in the pack (col. 3 lines 6-13) and the support straps further including separation clips (60) that allow a user to adjust or detach the support straps and access the top panel opening (22). It would have been obvious to one having ordinary skill in the art at the time the invention

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was made to include separation clips on the support straps of the modified Ivarson et al. backpack, as taught by Godshaw, so that a user could have easier access to the opening (32) of the backpack. The addition of these separation clips effectively transforms the support straps of the modified Ivarson et al. backpack into adjustable cinch straps.

Regarding claims 18, 23, and 31, Ivarson et al. discloses that the back panel (16) may be reinforced with a layer of material in order to enhance rigidity (col. 2 lines 56-59). Gausling et al., as previously mentioned, teaches that a panel of a backpack may be given rigidity by providing a semi-rigid board on the panel. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to position a semi-rigid back board on the back-facing panel of the modified Ivarson et al. backpack in order to enhance the backpack's rigidity for support purposes.

Regarding claims 19 and 32, Ivarson et al. discloses that the back-facing panel may include a cushion material for increased comfort to the user (col. 2 lines 59-61).

Regarding claim 22, the cinch straps of the modified Ivarson et al. backpack have one end attached to the away-facing face of the backpack and the other end attached to the shoulder straps at a spaced distance from the back-facing face of the backpack, as taught by Gausling et al. The cinch straps are also adjustable, as allowed by the separation clips taught by Godshaw. The remaining limitations in the claim are satisfied by the modified Ivarson et al. backpack as applied to claim 17 above.

Regarding claim 24, the cinch straps of the modified Ivarson et al. backpack as applied to claim 22 above satisfy the claim's limitations.



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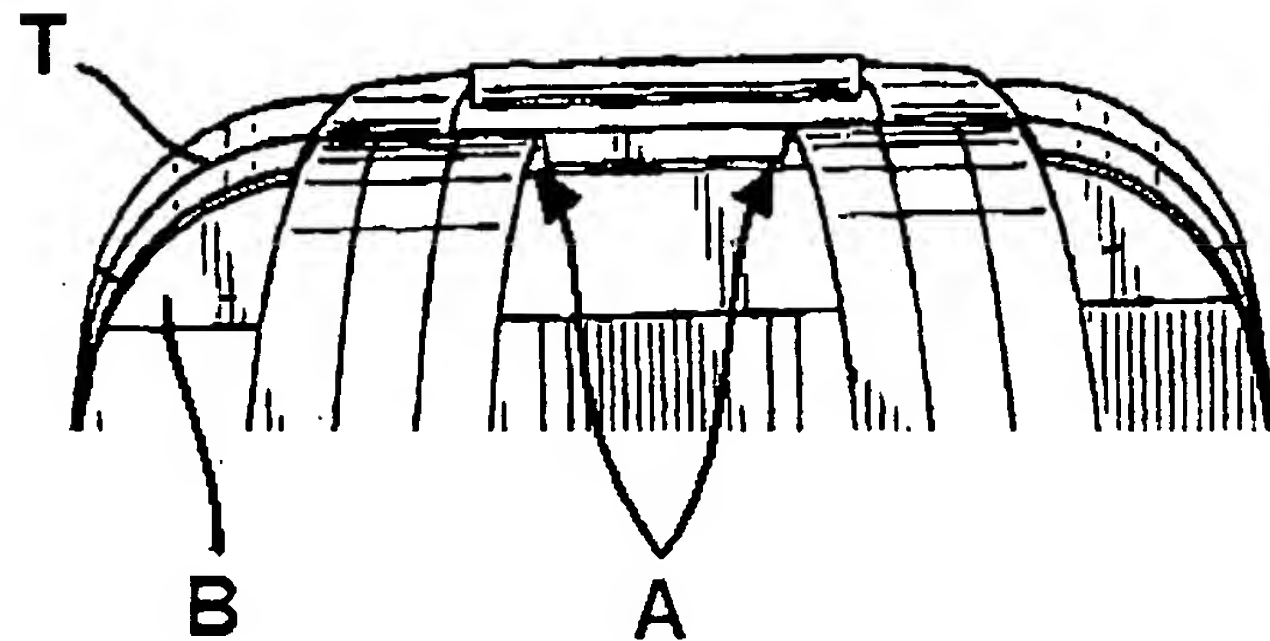
Regarding claim 27, the cinch straps of the modified Ivarson et al. backpack cinch the away- and back-facing faces of the backpack towards each other.

Regarding claims 28, 34, and 35, the modified Ivarson et al. backpack as applied above does not yet include a side cinch strap for cinching the away- and back-facing faces of the backpack towards one another. Gausling et al., however, also teaches that in addition to the top support straps, downwardly extending side cinch straps (400) may be provided for adjusting the load distribution of the backpack by cinching the away- and back-facing faces of the backpack towards one another (col. 6 line 65 – col. 7 line 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to further include downwardly extending side cinch straps on the modified Ivarson et al. backpack, as taught by Gausling et al., in order to further adjust the load distribution of the backpack.

Regarding claims 37, 41, and 51, the cinch strap of the modified Ivarson et al. backpack, as taught by Gausling et al., would have one end connected to the backpack body and one end attached to the shoulder strap wherein the two ends would be on opposite sides of the closure member (32) of Ivarson et al.

Regarding claims 38, 42, 44, 48, the back-facing face of the modified Ivarson et al. backpack has a top end (T, figure below) and the shoulder strap is connected to the back-facing face (B, figure below) at a position (A, below) spaced from the top end of the back-facing face.





Regarding claims 39 and 45, the cinch strap of the modified Ivarson et al. backpack has a first end positioned towards the away-facing face, as taught by Gausling et al.

Regarding claims 47 and 50, the claims combine limitations that have already been shown to be unpatentable over the modified Ivarson et al. backpack. The claims further recite the shoulder strap cinch strap having two portions, one connected to the shoulder strap, and one connected to the backpack body, where the two portions are connected to different parts of a quick-release mechanism. The buckled cinch strap of the modified Ivarson et al. backpack, as taught by Gausling et al. and Godshaw, includes two portions, one attached to the shoulder strap and one to the backpack body, as taught by Gausling et al., where the two portions are connected to different parts of a quick-release mechanism, as taught by Godshaw.

8. Claims 3 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied in paragraph #7 above in view of Shook (US 5,911,348).

Regarding claim 29, the modified Ivarson et al. backpack includes the claimed features except for the back-facing face having at least one air channel defined thereon,

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wherein said air channel has at least one opening at the periphery of the said back-facing face.

While the modified Ivarson et al. backpack includes padding on the back-facing panel, Shook teaches that it is known in the art to use padding that provides a series of air channels on the back-facing panel between the backpack body and the user's back in order to provide ventilation and comfort along a user's back. It would have been obvious to one having ordinary skill in the art at the time the invention was made to also use padding that provided at least one air-channel on the modified Ivarson et al. backpack, as taught by Shook, in order to provide ventilation along a user's back and help to prevent excessive perspiration and possibly discomfort.

Regarding claim 3, at least one, if not all, of the air channels taught by Shook can be considered to face the spine of a wearer, as they face the user's back in general and the spine is located on the back, and all are certainly sufficiently deep so as to avoid contact with the spine of said wearer when in use, effectively satisfying the limitations of the claim.

9. Claims 40, 43, 46, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied in paragraph #7 above in view of Gleason et al. (US 5,975,387 A).

The modified Ivarson et al. backpack includes the claimed features except for the cinch strap having a length adjustment strap positioned in front of the wearer when the wearer is wearing the backpack. Instead, the cinch straps, as taught by Gausling et al., are fixedly attached to a portion (310) of the shoulder strap that is not in front of the

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wearer. Gleason et al., however, also disclose a backpack having load-distributing cinch straps (54) extending between the pack body and the shoulder straps and teach that the cinch straps can be adjustably attached to the shoulder straps via an adjustment buckle (56). A portion of the cinch strap lies in front of the user so that the users can access the cinch strap to adjust the position of the load on their back (Figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the fixed cinch strap attachment of the modified Ivarson et al. backpack with an adjustable attachment, as taught by Gleason et al., so that a user could easily adjust the position of the load on their back by adjusting a portion of the cinch strap located on their front side within easy reach.

### ***Response to Arguments***

10. Applicant's arguments filed 9/22/06 have been fully considered but they are not persuasive.

Applicant has asserted that the strap (66) of Fier is folded as it passes upwardly through buckle (62) and then downwardly through the buckle so as to be locked in position. Examiners agrees, as this is how these length adjustment buckles typically work; a strap being first fed in one direction through a first aperture in the buckle, and then back through a second aperture in the buckle in an opposite direction. Frictional forces then hold the strap within the buckle when placed under tension. Even when under tension, a user can pull a free end of the strap to adjust the length of the strap, but the strap will not feed through the buckle in the opposite direction due to the frictional forces. The strap can only be fed back through the buckle when a user

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manually manipulates the buckle to relieve the frictional forces applied to the strap.

Sometimes, however, the free end of the strap will be folded over onto itself and sewn to itself to prevent its withdrawal from the second aperture of the buckle. This is the folding that Examiner mentions in paragraph 2 above. The free end of strap (66) of Fier is not folded back onto itself so as to prevent its passage through the second aperture in the buckle. Because such a fold does not exist, the strap is capable of being withdrawn from the buckle as quickly as a user desires to do so.

In response to applicant's argument that there is no suggestion to combine the references of paragraph 7 above, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, motivation was found in the knowledge generally available to one of ordinary skill in the art. Ivarson et al. disclose a backpack. Gausling et al. teaches that top straps can be implemented on a backpack to properly distribute the weight of the pack with respect to a user and to help maintain the shape of the pack. One of ordinary skill would realize that the top straps of Gausling et al. could be implemented on any backpack, including that of Ivarson et al. One of ordinary skill would quickly realize that the straps of Gausling et al. would interfere with access to the top opening of the Ivarson et al. backpack. One of ordinary skill in the art would learn from Godshaw that when straps

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interfere with access to any pack opening, the straps could be provided with releasable buckles so that they can be moved from obstructing access to the opening.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

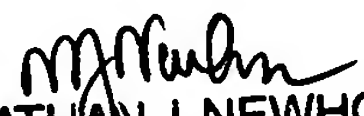
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER

JML  
3/7/07